

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

FILED

IN CLERK'S OFFICE

U.S. DISTRICT COURT E.D.N.Y.

United States District Court		District	Eastern
Name	Kevin McClinton	Prisoner No.	16A3832
Place of Confinement	Shawangunk Correctional Facility.		Case No. SEP 14 2021 1725/13
Name of Petitioner (include name under which convicted)		Name of Respondent (authorized person having custody of petitioner)	
Kevin McClinton		v. Superintendent Jaifa Collado	
The Attorney General of the State of: Lititia James			

BROOKLYN OFFICE

Komitee, J.

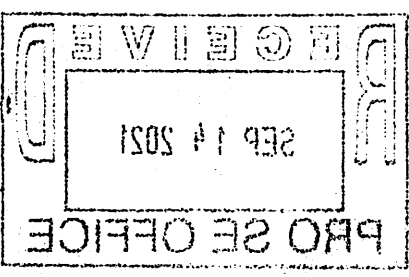
PETITION

- Name and location of court which entered the judgment of conviction under attack Queens County
125-01 Queens Blvd. New Gardens, New York 11415
- Date of judgment of conviction September 14, 2016
- Length of sentence 40 years to life.
- Nature of offense involved (all counts) One count of murder in the second degree (P.L. 125.25 [1]), and two counts of criminal possession of a weapon in the second degree (P.L. 265.03 [1][b], [3]).
- What was your plea? (Check one)
 - (a) Not guilty ☒
 - (b) Guilty ☐
 - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:
- If you pleaded not guilty, what kind of trial did you have? (Check one)
 - (a) Jury ☒
 - (b) Judge only ☐
- Did you testify at the trial?
Yes ☐ No ☒
- Did you appeal from the judgment of conviction?
Yes ☐ No ☐



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9. If you did appeal, answer the following

(a) Name of court Supreme Court of The State of New York Appellate Division 2nd Dept.(b) Result Modified sentence, affirmed conviction.(c) Date of result and citation, if known February 5, 2021

(d) Grounds raised _____

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☐No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

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(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☐ No ☐

(5) Result

(6) Date of result

(b) As to any second petition, application or motion give the same information:

(1) Name of court

(2) Nature of proceeding

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☐ No ☐

(5) Result

(6) Date of result

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

Grounds Raised

Ground One: The proof was insufficient to establish Appellant's guilt, and the verdict was against the weight of the evidence, because the People's case depended on the incredible testimony of witnesses who cooperated in exchange for leniency in numerous serious felony cases and persistently contradicted themselves and each other.

Ground Two: Appellant was deprived of his due process right to a fair trial by the people's failure to disclose Brady material that would allowed counsel to contact eyewitness who identified a different person as the shooter or who told police that a single shooter in a blue sweater perpetrated the attack.

Ground Three: Appellate was deprived of a fair trial by (A) the gratuitous introduction of inflammatory evidence about the victim's background and graphic depictions of her death, and (B) the prosecutors' improper opening and closing arguments, which focused on that irrelevant evidence and implied that the victim's family "deserved" a guilty verdict.

Ground Four: Appellant's sentence of 40 years to life in prison was (A) illegal because the court imposed consecutive sentences for two offenses arising out of a single act, and (B) Excessive in light of Appellant's youth, minimal criminal history, and extraordinary potential for successful rehabilitation.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: _____

Supporting FACTS (state *briefly* without citing cases or law) See appellant's brief at
pages 3-34; 34-44.

B. Ground two: _____

Supporting FACTS (state *briefly* without citing cases or law) See appellant's brief at
pages 3-34; 44-52.

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C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law) See appellant's brief at
pages 3-34; 52-61.

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law) See appellant's brief at
pages 1-34; 61-69

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

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(c) At trial Michael Horn(d) At sentencing Michael Horn(e) On appeal Caitlin Halpern, Gibbs & Bruns LLP, 1100 Louisiana Suite 5300 Houston, Texas 77002

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

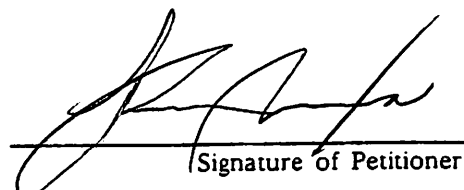
(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

September 1, 2021
(date)

Signature of Petitioner